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Wednesday, July 8, 1987

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re

ERWIN HANSEN, No. 1-86-01529

Debtor.

_____/

WILLIAM B. GROVER, Trustee,

Plaintiff,

v. A.P. No. 1-86-0228

CENTENNIAL SAVINGS,

Defendant.

_____/

MEMORANDUM OF DECISION

Facts

This is a dispute between the trustee in bankruptcy and the receiver of a defunct savings and loan association over ownership of a 1971 Mercedes limousine of some value. The matter

comes before the court on a very muddled set of facts. The uncertainty as to what actually happened is compounded by the questionable credibility of the witnesses produced by each side, one of whom could not remember answers to key questions and refused to answer others on Fifth Amendment grounds, and the other being an admitted embezzler of a very large sum. Nonetheless, from the evidence presented the court finds the facts to be as set forth in the following two paragraphs. In the summer of 1983, debtor Irwin Hansen, who was then the CEO and a major stockholder in defendant Centennial Savings and Loan Association, decided to purchase the subject vehicle from pictures shown to him by a person who had business ties to both Hansen personally and to Centennial. The vehicle was then in the Netherlands. At the time he agreed to purchase the vehicle, Hansen intended it for his own use as his own property. Some time before the vehicle arrived, perhaps when he learned of the $20,000.00 bond required to bring the vehicle into this country, Hansen decided that the vehicle would be used by Centennial and that Centennial would pay for the bond and other expenses associated with the vehicle. The vehicle was used as a Centennial company car, and Centennial paid the $27,00.00 necessary to make the repairs and modifications required to register the vehicle here and recover the bond, which was recovered by Centennial. The vehicle was never registered here; all of the import documents name the purchaser as Hansen personally. The court is not able to determine who paid the purchase price for the vehicle, although it is clear that whoever paid it did not do so in an open and honest manner. The issues before the court are whether or not the vehicle is property of the debtor's estate and, if it is, whether Centennial is entitled to a lien for repair and modification costs.

Ownership

In order to resolve the ownership issue, this court is supposed to look to state law. 4 **Collier on Bankruptcy** (15th), p. 541-11. Unfortunately, California Vehicle Code section 460, which defines "owner," is of little help and almost all of the state cases discussing ownership arise in situations where an injured party seeks to establish ownership in another for liability purposes. State law is therefore of little actual help in resolving this dispute. Much more helpful are bankruptcy cases resolving vehicle ownership disputes between a corporate officer and the corporation he formerly controlled. It is conceded by both parties that what legal documents exist name only Hansen as the owner of the vehicle; Centennial's claim to ownership is entirely equitable in nature. Under section 541(a) of the Bankruptcy Code, a debtor's legal ownership of an automobile is sufficient to make the automobile property of the estate. Brandt v. Woodlawn Auto Workers, F.C.U. (2nd Cir.1985) 757 F.2d 512, 515. At the very least, then, the burden of proof is on Centennial to establish equitable ownership notwithstanding legal ownership in Hansen. In In re Potter's Landscape Nursery, Inc. (Bkrtcy.E.D.Pa. 1984) 44 B.R. 198, the court did find that a vehicle registered to the president of a closely-held corporation was equitably property of the debtor corporation. In that case, however, the bankruptcy trustee established that there was an agreement to transfer title to the corporation and thereafter the corporation had made all loan payments on the vehicle, paid all insurance and repair costs, and listed the vehicle as a corporate asset in its tax returns. In this case, although Centennial did establish that it paid for repairs and insurance it did not show any sort of agreement to transfer ownership from Hansen to it, nor did it produce any document listing the vehicle as a corporate asset. The facts in this case are very close to those in In re White House Decorating Co., Inc. (10th Cir.1979) 607 F.2d 907. In that case, the Court of Appeals reversed the ruling of the bankruptcy court and the district court that two boats registered in the name of the debtor's president were corporate assets because the corporation had made the payments on them and had possession of them when

it filed its bankruptcy petition. The court held:

> Both the bankruptcy judge and the district court were greatly influenced by the possibility that May misused corporate funds by taking money from the corporation to make these purchases or to pay boat expenses. But the source of funds used to pay for the boats does not affect the ownership of the boats, absent a showing that title was intended to be held for the corporation or of a concealment giving false appearances to creditors. No such evidence was presented here. 607 F.2d at 910.

As in White House Decorating, Centennial has here failed to produce any evidence of an agreement to transfer ownership of the vehicle to Centennial or any evidence of misleading ownership of the vehicle given to creditors. The mere payment of the vehicle's expenses, without more, does not establish Centennial's ownership.

Lien Rights

If state law were solely applicable to the facts of this case, the court would be inclined to grant Centennial a lien in the vehicle for the amount it expended for repairs, less the reasonable rental value of the vehicle during the time Centennial used it. However, all unperfected lien claims made in this court must be decided under section 544(a) of the Bankruptcy Code. There is no doubt that under bankruptcy law Centennial cannot be allowed an equitable lien. As the court noted in In re Caro Area Services for Handicapped (Bkrtcy.E.D.Mich.1985) 53 B.R. 438, 441 n. 4:

> There is no merit to MDOT's statement that equitable liens survive the trustee's "strong-arm" powers.... Equitable or other "secret" liens are precisely the sort of interests which the Code permits trustees to defeat.

See also In re McWhorter (Bkrtcy.D.S.C.1984) 37 B.R. 742, in which the court held that an equitable lien in a vehicle cannot survive attack under section 544(a). The most meritless argument Centennial makes is that because it has been taken over by the F.S.L.I.C. it should be considered to be the "good new Centennial" as opposed to the "bad old Centennial," and this strengthens its claim to an equitable lien or constructive trust because like the trustee in bankruptcy it is working for creditors now. Far from being compelling, to the extent this argument is true it renders the issue of equitable lien rights moot, as the proceeds from the sale of the vehicle will go to the right parties through the trustee anyway. It also means that "good new Centennial" is wasting its time and the resources of creditors litigating when the outcome does not benefit its creditors.

Conclusion

For the foregoing reasons, plaintiff William B. Grover is entitled to a judgment requiring defendant Centennial Savings to turn over the vehicle to him and declaring that Centennial has no right, title or interest in it. Counsel for plaintiff shall prepare and submit an appropriate form of judgment. This memorandum shall constitute findings and conclusions pursuant to Bankruptcy Rule 7052 and FRCP 52(a).

Dated: July 8, 1987

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ALAN JAROSLOVSKY

U.S. BANKRUPTCY JUDGE

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